Scientific and Technical Journal

Safety & Defense 5(2) (2019) 35–40

Ignorantia iuris nocet Principle in selected Polish legal regulations – outline of the problem

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Abstract

This article presents reflection made in the field of Roman legal thought in selected Polish legal regulations with potential impact on the functioning of the individual. The universal form of the principle – regardless of the legal system – implies a potential threat to the functioning of the individual in the form of uncertainty. The purpose of this publication is to indicate the need to update legal regulations regarding the indicated matter – in particular – in the form of an obligatory examination for the courts of the statute of limitations in a situation where a natural person is a party to the proceedings. Accurate provisions of the Code of Administrative Procedure, Code of Civil Procedure and selected court sentences were presented. In the research process, was made extensive use of qualitative research methods, including in the form of analyses (e.g.: legal and institutional analysis, comparative analysis, system analysis and methods: analysis and logical construction), generalization and implication. In turn, among quantitative research methods, intensively was used statistical analysis and a diagnostic sounding survey. In addition to the literature analysis – important support of the research process was the examination of documents (including provisions of national law) and available sources of knowledge about the problems studied. The source material included both open access and published studies in specialist journals. At this stage of the research, have been analysed the applicable legal regulations and selected sentences of Polish Courts. The mentioned above, empirical methods included the following: a diagnostic sounding survey – conducted in the form of surveys using the CAWI technique. The empirical stage of the research also consisted in the assessment of the legal status. The cognitive and utilitarian premises of the problems are the implementation of the adopted hypothesis: *Ignorantia iuris nocet Principle in connection with numerous amendments to regulations may have negative consequences for the functioning of the individual.*

Keywords: safety, law, Roman law

1. Introduction

Roman legal though is considered the international foundation of legal knowledge, being not only an interpretation, but also a basis for subsequent legal regulations. The whole treasury of the network of concepts created on its basis, terminology and rules – today, is used by the law authorities of the greater part of the modern world. Unfortunately, for citizens living in legal systems based on these principles and the interpretation based on them, it may imply adverse effects on the individuals who function in them.

The starting point of these considerations is one of the fundamental Roman maxims: Ignorantia iuris nocet – "ignorance of the law is harmful, not one can hide behind the ignorance of the law". Threats resulting from this principle will be presented on the basis of an analysis, an example of which is the Polish organizational and legal system.

2. Number and volatility of legal provisions

The first criterion for the analysis is the legal volatility index, in which – according to calculations by Grant Thornton in 2012–2014 – Poland has achieved the highest level in the European Union. According to the estimation results (the verification coefficient was determined by the factor of the number and volume of the created legal acts), in the Polish legal system, on average, almost 56 times more provisions were made than in Sweden and 11 times more than in Lithuania. The indicated highest legal volatility indicator means not only an unpredictable legal reality for citizens, but also its uncertainty. In turn, these negative factors determine the potential danger to the functioning of an individual in a given legal system – especially in the area of an inability to keep up with emerging changes. It is worth adding that in 2016, the balance of enactment of legal acts in the form of laws and ordinances reached as high as 2,306. It should also be emphasized that in every legal act created, there are references to subsequent legal acts (from several appeals to even 24). An example of this is the Act of July 16, 2004 on the Telecommunications Law (Journal of Laws of 2004, no. 171 item 1800), which relations with other legal acts, both as an active or passive nature, are presented as follows:

- modified acts – 17,
- repealed act – 2,
- referrals – 7,
- executive acts – 147,
- amending act – 59.

Therefore, it becomes obvious that the possibility of functioning in a legal system with such intensity of change is only apparent and the citizen's situation – stable only until the collision incident does not exist in such an environment.

3. Judications

The consequences of the principle of harmfulness of ignorance of the law can be significant and disadvantageous for every individual – citizen. Starting from the lack of knowledge concerning the obligations resulting from the regulations, for which an obligation to pay specific taxes may be used (e.g. a perpetual usufruct fee – the user is not informed annually about the date and amount), after the possibility of evading from adverse consequences of actions or omissions – or simply implementing their rights. The Supreme Court in its justification of the decision of January 25, 2006 (The Supreme Court Order OSNC 2006/10/173, case I CK 233/05) stated that the functioning of the law, especially in a democratic state of law, is based on the assumption that all recipients of the applicable legal norm, i.e. both entities obliged to comply with it and the bodies appointed to use it, know its proper content. This is the so-called fiction of the general knowledge of the law. Going further, it must be stated that this principle entails a state in which no one can evade the negative effects of a violation of the norm on the grounds that he did not know the norm or misunderstood it. In the judgment of the Supreme Administrative Court of July 13, 2018 (Supreme Administrative Court Sentence

Ref.: I OSK 990/18 – SAC judgment) it was stated that: In public law, the principle does not apply. However, in the next part of the discussion, an example will be illustrated, which confirms that placing an instruction in the administrative decision (or a verdict) indicating only the legal basis with quoting the relevant provisions is only a theoretical and apparent implementation of the thesis in practice. In the further part of the justification of the judgment, it can be read that: Requiring the authority to "instruct" the party in detail about its interpretation would go beyond the scope of the authority's duties resulting from the above principles (Judgment of the Supreme Administrative Court, Ref.: I OSK 990/18). It is worth indicating here the content of the referenced provisions of Article 8. § 1. and Article 9 of the *Code of Administrative Procedure* (Journal of Laws 1960 No. 30 item 168, as amended):

- Public administration bodies conduct proceedings in a way that evokes the trust of its participants to public authorities, guided by the principles of proportionality, impartiality and equal treatment (Article 8,The CoAP, Journal of Laws 1960 No. 30 item 168).
- Public administration bodies are obliged to duly and comprehensively inform the parties about the factual and legal circumstances that may affect the determination of their rights and obligations being the subject of administrative proceedings. The authorities ensure that the parties and other persons participating in the proceedings do not suffer any damage due to ignorance of the law, and for this purpose, they provide them with necessary explanations and instructions (Article 9, The CoAP, Journal of Laws 1960 No. 30 item 168, as amended).

4. Selected consequences and possibilities of solutions

The Polish legal system lacks not only a comprehensive education program at the basic level in the field of the knowledge of the foundations of law and its continuation at higher levels, but also system solutions in the area of citizen – state institution relations. Becoming familiar with and understanding the complicated legal status on the part of a citizen without legal training is objectively impossible. This fact does not concern the regulations themselves, but, in particular, related procedures. Burdened with forms and appropriate sequence of procedural events – including even deadlines for submitting relevant documents – the citizen becomes defenseless in a machine of incomprehensible records. The institution of the statute of limitations will be the crown example here. In the Polish legal system, the rule is that the limitation period for property claims is now 6 years. However, there are

significant exceptions to this rule, for example, periodic (repetitive) claims, which expire after 3 years, or resulting from a sales contract that expires after 2 years (concerning only claims of entrepreneurs). The principle is also that the limitation of claims does not cause their termination – they can be claimed, however, after the expiry of the limitation period, the one who is entitled to the claim, may evade its satisfaction, which means no need to meet it. The beginning of the claim settlement procedure takes place at the moment of the call to fulfil the claim (pre-court proceedings), and then with the referral to the lawsuit, however, it is crucial to indicate the type

of procedure by the plaintiff (order mode). The possibility of evading the defendant's fulfilment

of the claim only takes place at the moment of the response to the statement of claim and the limitation of the claim. In this situation, two issues are of key importance, namely the lack of judicial control from the office of expiration of the limitation period and the inability to reverse the role of the debtor. It is undisputed that an examination from the office of expiration of the limitation period for persons without a professional attorney would be the implementation of a guarantee of equality before the law – especially in the aspect of having specialist knowledge. The second issue – the reversal of the role – refers to the inability of the debtor to submit a pleading to terminate the overdue liability relationship, which is still dependent on the plaintiff's decision (whether such a letter will ever be filed). The purpose of the previous considerations is not – obviously – gaining an advantage for the debtor, but in practice, debt collection companies often make massive purchases of obsolete liabilities for an undervalued value due to the debtors' low level of legal awareness. The issue of court limitation control was reflected in the draft of the Ministry of Justice of the Republic of Poland (as of May 31, 2018). However, there are no changes in the scope of the abstraction of the debtor's obligation of absolution. The adoption of such a solution in the legal system would allow balancing the position of the parties to the ratio of the obligation, which is currently non-existent. Until the plaintiff has lodged the claim, it still exists, causing the suspended state – possible to be solved by the debtor only by repayment. It is worth pointing to the research carried out in the area of level of knowledge in the field of expiration institutions.

5. Results of research

Respondents indicated that the institution was known to them in the same percentage share, i.e. 74.4 % (Fig.1.), in which these persons were parties to the proceedings related to issuing the payment order (Fig. 2.), but only 10.3 % of them used the expiration institution (research carried out by the author with the CAWI method. August 2018). On the other hand, the question of whether the respondents are familiar with the rules of the expiration in force in civil law – only 64.1 % of respondents answered affirmatively.

This example is of great importance in the context of potential threats – understood in the discussed matter as uncertainties – for the functioning of the individual. For the question of whether the respondents know the provisions regarding the expiration of the limitation period – only 64.1% of respondents answered in the affirmative.

Particularly noteworthy is the fact that as many as for 46% of the respondents, instructions attached to the pleadings are incomprehensible.

Are the instructions attached to the pleadings understandable?

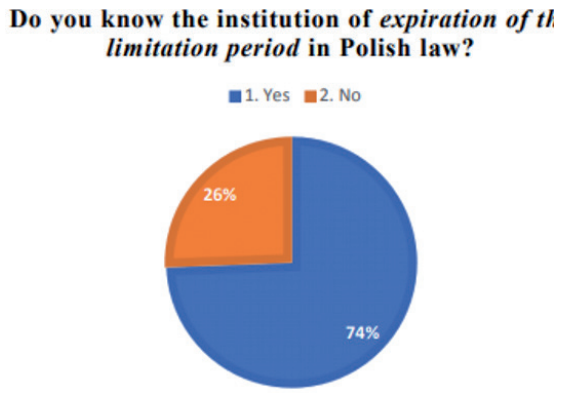

Fig.1. The result of the answers given to the survey question in the field of the institutions of limitation in the Polish legal system.

Fig. 2. The results of the questionnaire regarding participation in preparatory proceedings.

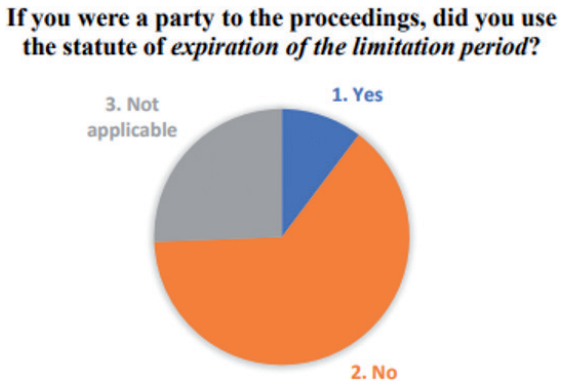

Fig. 3. The results of answers provided in the use of the expiration of the limitation period institution provided for by the law.

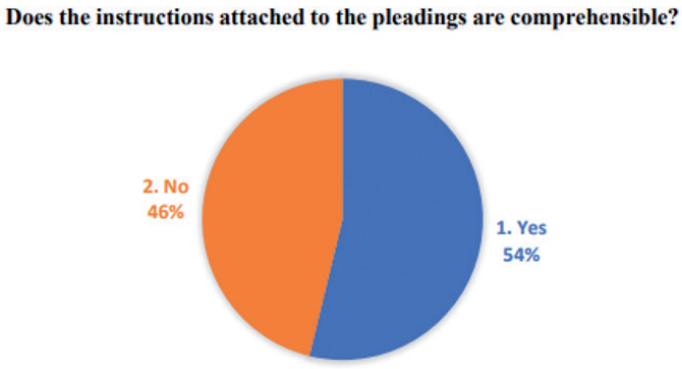

Fig. 4. The results of answers given to a question regarding the content of instructionsattached to official letters.

For the question of whether the court should examine "ex officio" the possibility of limitation in property cases regarding payment orders – as many as 61.5% of respondents answered affirmatively in relation to 10.3% who provided negative answers.

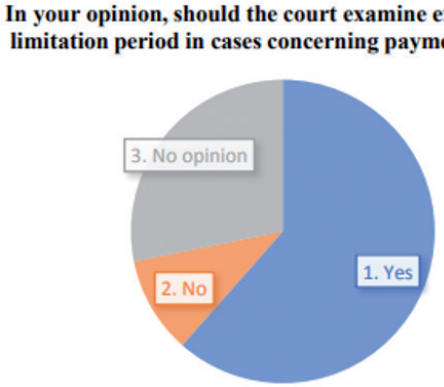

Fig. 5. The results of the answer to the question regarding obligatory examination by the court of expiration of the limitation period.

This example is of great importance in the context of potential threats – understood in the discussed matter as uncertainty – for the functioning of the individual.

6. Implications

The fact that there is an objective inequality of the parties is obvious – especially visible in citizen – state institution relations, in particular in the course of administrative proceedings. In accordance with the general principles of administrative law, contained in Act of June 14, 1960 – Code of Administrative Procedure, Journal of Law of 1960 No. 30 item 168, as amended), public administration bodies are obliged to duly and comprehensively inform the parties to the proceedings about the factual and legal circumstances that may affect the determination of their rights and obligations subject to administrative proceedings. The authorities ensure that the parties and other persons involved in the proceedings do not suffer damage due to ignorance of the law, and for this purpose provide them with necessary explanations and instructions (Journal of Law of 1960 No. 30 item 168, as amended). This principle has been specified, among others, in the provisions on the obligation to indicate in the request of legal consequences of failure to comply with the summons, information on the consequences of failing to fill in the missing parts (leaving the application without recognition), informing the parties about the legal consequences of the suspension of proceedings at the party's request and instruction on admissibility and procedure in relation to an administrative

court. In this respect, the fact that the content of instructions is usually complex and incomprehensible for the citizen, which results in the inability to properly identify the legal situation as a party of the proceedings, which is also confirmed by the results of the research is of key importance. The consequence of this state of affairs may be the necessity of using professional services or leaving the matter without further action. An example may be the institution of restoring the date, which, however, in accordance with Article 58 of the indicated Act – is initiated at the request of a party together with the requirement to meet two prerequisites altogether, namely: submission of an application for reinstatement of the defaulted date and substantiation that the fault occurred without the fault of the applicant. An additional requirement is the deadline of 7 days from the day of cessation of the reason for the failure to comply with the deadline with the simultaneous completion of the activity for which the data was specified. It should be emphasized that the decision of the public administration authority to suspend a decision or a verdict in the event of a request to restore the deadline for lodging an appeal or complaint also requires the party to expressly request, however, in accordance with the provision of Article 60. of the Code of Administrative Proceedings, the authority may, but does not have to, accept the applicant's request in this regard (sic!). The decision cannot be enforced only within the time limit set for lodging an appeal. Returning to the example indicated in point 2 – the analyzed cases of administrative decisions indicate the use of a general formula in the instructions, which consists in indicating the provisions of Chapter 10 of the Code of Administrative Proceedings. Although Article 128 indicates that there is no need to prepare a special justification, it must result from it that the party is not satisfied with the decision issued. In practice, this means that it is not enough to express a lack of satisfaction by the party with one sentence. In addition, the second sentence of the abovementioned provision indicates the possibility of the existence of other requirements regarding the content of the appeal, which in fact confirms the thesis regarding a citizen's apparent right of to be ignorant of the administrative provisions. The example instructions attached to the order for payment in the ordering proceedings contain the following provisions:

1. Article 493 § 1. of the *Code of Civil Procedure* (Journal of Laws 2019 No. 1460), which: indicates the jurisdiction of the court that issued the order for payment and as the competent to file a letter containing the charges. It also indicates that the respondent should indicate whether he or she is appealing against the order in whole or in part,

which should be reported under pain of losing the case, as well as the facts and evidence.
The court disregards the delayed claims and evidence, unless the party makes it probable that they did not report them in the charges without their fault or that the inclusion of late claims and evidence would not cause delay in the consideration of the case or other exceptional circumstances (Journal of Laws 2018.0.1360).
Paragraph 2 indicates the absolute requirement to file the charges on the official form, if the claim was filed in this form.

2. Article 165 § 1. of the Code of Civil Procedure: Deadlines are calculated according to the provisions of the civil law. § 2. Submission of the procedural letter in the Polish post office of the designated operator within the meaning of the Act of November 23, 2012 – the Postal Law or in the postal service of the operator providing postal universal services in another EU member state is tantamount to submitting it to court (Journal of Laws 2019 No. 1460).
3. The applicant and participants in the proceedings and their representatives are obliged to notify the court about any change in their place of residence. In the event of negligence of this obligation, the court letter shall be left in the case file with the effect of delivery, unless the new address is known to the court (Journal of Laws 2019 No. 1460).

7. Conclusions

Summarizing the considerations in the matter covered by the subject, it should be pointed out that education in the scope of binding legal provisions most often concerns the hierarchy of norms, branches of law and general characteristics thereof. The later knowledge in practical terms comes, in principle, along with life experience. This fact causes a key paradox: the state requires its citizens to know the provisions of the applicable law without providing the opportunity for proper education in this area. The result of such incongruence is the intellectual overpowering of their own citizens who become defenseless against the existing system. This thesis is clearly confirmed by the words of the Human Rights Ombudsman, who explicitly stated: The address of the legal norm is not able to become acquainted with its contents without the professionals, and thus determine the scope of his rights and obligations.

This makes most citizens hostages of administrative bodies and accidental, usually selective and ad hoc, legal advice. Complaints that are received in this regard by the Office of the HRO constitute the majority of all complaints (Kochanowski,2018).

In addition, apart from the relationship between the state and the citizen, the situation also applied to others, such as the client – entrepreneur relationship. This is evidenced by the adoption of contractual forms that are not negotiable and the use of abusive clauses by entities. For example, in the register of prohibited provisions announced on the website of the Polish Office of Competition and Consumer Protection, there are over 7,100 of such patterns (sic!).

Returning to the main thought, as it has been aptly observed by the Human Rights Ombudsman already mentioned: in a democratic state of law, one of the basic principles defining relations between a citizen and the state is the principle of protection of the citizen's trust in the state and its law, which is part of the democratic state rule (Kochanowski,2018). This thesis is confirmed in particular by the ruling of the Constitutional Tribunal, also referred to by the HRO: In addition, the convergent position expressed in the case law of the Supreme Court should be pointed out, in which it was stated that the principle of trust in relations between a citizen and a state manifests itself among others in such making and exercising of the law that it would not become a kind of a trap for citizens and that they could entrust their affairs knowing that they will not expose themselves to legal consequences which they could not predict at the time of making decisions and taking actions, and that their actions under the applicable law and all related consequences will also be recognized later through the legal order (Judgment in the name of the Republic of Poland of May 24, 1994 (Constitutional Tribunal sentence of May 24, 1994, Case no. K. 1/94).

Conducted research allows to state, that *Ignorantia iuris nocet* Principle may have negative consequences for the functioning of the individual, for example the inability to use the provided rights or negative financial consequences (e.g. ignorance of the possibility of invoking the limitation period for the claim).

The necessity of revising the Roman principle, which in most cases is harmful to the individual, is beyond doubt. There is no objective possibility of some functioning in the legal system to which the individual is not prepared.

The polemic that comes to mind – by analogy – to other specialized fields, such as medicine, must give way, due to its nature. A hypothetically healthy individual may never encounter the necessity of using medical services, however, it is not possible to function outside the legal system of the state. Therefore, it becomes obvious that the possibility of functioning in a legal system with such an intensification of changes is only apparent and the situation of the citizen – stable only to the point where there is no collision incident in such an environment. The uncertainty of the individual's functioning is only one of the negative implications of the principle under discussion, but – undoubtedly – the most significant one.

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